

#400

PBT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PAINAWAY AUSTRALIA PTY
LIMITED ACN 151 146 977,

Plaintiff,

v

MAXRELIEF USA, INC

Defendant.

Case No..

18CN 3854

FILED

SEP 07 2018

KATE BARKMAN, Clerk
By _____ Dep. Clerk

COMPLAINT

Painaway Australia Pty Limited ACN 151 146 977 ("Painaway") states as follows for its
Complaint against Defendant, MaxRelief USA, Inc. ("MaxRelief"):

PRELIMINARY STATEMENT

1 Painaway is an Australian company that produces a pain relief spray and cream
Painaway is the market leader in Australia for such products. MaxRelief is a United States
company that also produces a pain relief spray and cream, and sells its products in the United
States In connection therewith, MaxRelief markets its products in the United States through its
website, and through media platforms that sell MaxRelief's products. MaxRelief markets its pain
relief cream and spray products as "Australia's #1" products. (Exhibit "A ") However,
MaxRelief's pain relief cream and its pain relief spray are not sold in Australia In fact,
MaxRelief does not sell any products in Australia. Therefore, MaxRelief's advertising is false,
and in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

PARTIES

2 Painaway has its principal place of business at Level 17,175 Pitt Sydney, NSW,
Australia Painaway manufactures and distributes within Australia a range of arthritis and pain

relief spray, cream and roll-on products under the brand name Painaway, which is the market leader in Australia. It is an Australian owned and operated company. It sells its products off the shelf in Australian pharmacies, grocery stores, supermarkets, and health food stores. Its products are registered with the Therapeutic Goods Administration (the "TGA"), which is Australia's regulatory agency for medical drugs and devices.

3. On information and belief, MaxRelief is a Delaware corporation, with a principal place of business at 131 Fairfax Street, Denver, Colorado, 80220. MaxRelief markets its products through its website www.maxrelief.us/ and www.maxrelief.com/, and also on various online shopping platforms such as ebay.com, amazon.com, and walgreens.com. MaxRelief additionally sells its products through various pharmacies in Pennsylvania.

JURISDICTION AND VENUE

4. MaxRelief has engaged in the transaction of business and committed the acts complained of herein in interstate commerce and in the Eastern District of Pennsylvania. This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 and 1338(b).

5. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1) because the acts alleged in the Complaint occurred in this district.

FACTUAL ALLEGATIONS

6. For many years, Painaway has manufactured and distributed within Australia and elsewhere, including the United States, a variety of arthritis and sports pain relief spray, cream, tablets, capsules, and roll-on products under the brand name Painaway. The Painaway products have been the market leader in Australia for a number of years.

7. Painaway's products are registered with the TGA.

8. In 2012, an Australian company named Natures Investments Holding Pty Ltd. (“Natures Investments”) filed an application with the United States Patent and Trademark Office to trademark a stylized rendition of the words “MAXRelief” with a stylized leaf replacing the dot above the “i”, and a thick, bold chevron pointing to the right immediately following the literal element. In late 2012, Natures Investments abandoned the trademark application

9. On information and belief, in or about 2012 or 2013, Natures Investments, doing business as MaxRelief USA, Inc., began advertising a pain relief spray under the stylized rendition that it had sought to have trademarked.

10. As a marketing strategy to consumers in the United States, Natures Investments advertised its product by identifying MaxRelief as “Australia’s #1 Pain Relief Spray, now available in the USA.” (Exhibit “B.”)

11. Natures Investments’ statement in its advertisement was explicitly false and misleading because it explicitly stated that Natures Investments’ product was Australia’s #1 pain relief spray when it was not. In fact, Natures Investments’ product was not even sold in Australia.

12. In July 2016, Painaway brought an action against Natures Investments d/b/a MaxRelief in the United States District Court for the Eastern District of Pennsylvania alleging violations of the Lanham Act. On February 28, 2017, “upon consideration of [Painaway’s] Request for Entry of Default Judgment” and the “hearing held on February 27, 2017,” the Court entered a default judgment on behalf of Painaway, and specifically enjoined Natures Investments from “advertising and promoting MaxRelief as Australia’s # 1 Pain Relief Spray in the United States ” (“Injunction Order”) (Exhibit “C ”)

13 Although not entirely clear to Painaway, it appears that at some time the entity MaxRelief separated itself from Natures Investments

14 Subsequent to the entry of the Injunction Order, MaxRelief continues to advertise and promote its MaxRelief product through various media platforms and mediums as “Australia’s #1” pain relief spray and pain relief cream. This includes media advertisement on its website, as well as advertisement on Twitter, Amazon, ebay and other media platforms. These advertisements and promotions are false because they explicitly state that MaxRelief’s product is Australia’s #1 pain relief spray and cream when it is not. In fact, MaxRelief’s products are not even sold in Australia.

15 Painaway believes that it will lose sales in the United States and elsewhere as a direct result of the false and misleading claim made by MaxRelief that it is Australia’s #1 pain relief spray and/or cream, and advertising its product as such.

Count I
Violation of Section 43(a) of the Lanham Act

16 Painaway hereby incorporates by reference its preceding allegations as if fully set forth at length herein

17 Under 15 U.S.C. § 1125, the Lanham Act provides in pertinent part

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

18. MaxRelief's false advertising claims as described above constitute false and misleading descriptions of fact in interstate commercial advertising and promotion, which materially misrepresent its product, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

19. MaxRelief's false and misleading advertising claims are willful and intentional, with deceptive intent, making this an exceptional case.

20. MaxRelief's false and misleading claims have caused, and will continue to cause, great, immediate, and irreparable harm to Painaway's business reputation, injury to its goodwill, and loss of competitive advantage

WHEREFORE, Painaway respectfully requests that this Court enter judgment in its favor as follows.

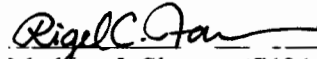
(a) entering a preliminary and permanent injunction against MaxRelief preventing it from advertising and/or promoting MaxRelief as Australia's #1 pain relief spray and/or cream, or from advertising that it is the #1 seller of any product in Australia;

(b) awarding any further relief that this Court deems appropriate, including without limitation, financial compensation for any injury suffered by Painaway, together with attorneys' fees and costs of suit; and

(c) awarding to Painaway such other and further relief as this Court may deem just

Date: September 7, 2018

Respectfully submitted,



Mathieu J. Shapiro (76266)

Rigel C. Farr (316869)

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

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Martin J. O'Hara

Much Shelist, P.C.

191 North Wacker Drive, Suite 1800

Chicago, IL 60606

Phone 312.521.2725

Fax 312.521.2825

mohara@muchlaw.com

(pro hac vice motion forthcoming)

Counsel for Painaway Australia Pty Limited

ACN 151 146 977

Exhibit “A”

Max Relief USA @MaxRelief

maxrelief.us

GET IT AT

maxrelief.us

ARNICA

100% Natural Pain Relief Cream

SMILE WITHOUT PAIN

Australia's #1 Natural Pain Relief Spray & Cream
Now Available in the US

MAXRelief

100% Natural Ingredients

135

75

28

10

Follow

New Tab

Max Relief USA @MaxRelief

Twitter

maxrelief.us

Home

Moments

Notifications

Messages

Search

Twitter

Secure <https://www.ebay.com/itm/MaxRelief-Australia's-1-Pain-Relief-Cream-3X-More-Arnica-Than-other-Pain-Creams-/17263683997>

Home | eBay | Daily Deals | Gift Cards | Help & Contact | Simple Selling Summer Cash

ebay Shop by category Search for anything

All Categories Search Advanced

Back to home page Listed in category: Health & Beauty > Skin Care > Lightening Cream

Add to watch list



MaxRelief Australia's #1 Pain Relief Cream 3X More Arnica Than other Pain Creams

Be the first to write a review

Condition **New**

Quantity **1**

2 available / 3 sold

Price **US \$27.00**

Buy It Now

Add to cart

☐ Add to watch list

Limited quantity remaining

More than 50% sold

30-day returns

Shipping **\$22.95** International Priority Shipping to Australia via the Global Shipping Program [See details](#)

Item location: Multiple Locations, United States

Ships to: United States and many other countries [See details](#)

Delivery Estimated between **Sat, Jun. 30 and Wed, Jul. 11** [See details](#)
Includes international tracking

Payments **PayPal** [See details](#)

Any international shipping and import charges are paid in part to Pitney Bowes Inc. [Learn More](#)

Shop with confidence

eBay Money Back Guarantee
Get the item you ordered or get your money back [Learn More](#)

Seller information
tremendousshop (104) ★
100% Positive feedback

[Save this Seller](#)

[Contact seller](#)

[Visit store](#)

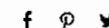
Secure https://www.walmart.com/ip/MaxRelief-Arnica-Pain-Relief-Spray-Australia's-#1-Sufferers-Back-Neck-Knee-Joint-Muscle-Pain-Reduces-Arthritis-Joint-Inflammation-Sciatica-Fibromyalgia/553902326



Search



Home > Medicine & Health > Pain Relievers > Specialty Pain Relievers



MaxRelief Arnica Pain Relief Spray - Australia's #1 - For Sufferers of Back, Neck, Knee, Joint & Muscle Pain. Reduces Arthritis & Joint Inflammation, Sciatica & Fibromyalgia pain treatment. 4 oz

[Write a review](#) [MaxRelief](#) Walmart # 566705690

\$18.37 \$4.60 / fl oz

Free shipping on orders over \$35

Arrives by Saturday, Jun 23 [Options](#)






Qty

1

Add to Cart

Pickup not available

Secure https://www.walmart.com/ip/MaxRelief Arnica Pain Relief Cream - Australia's #1 - For Sufferers of Back, Neck, Knee, Joint, Muscle Pain, Reduces Arthritis, Joint Inflammation, Sciatica, Fibromyalgia/343736011

	Search	   
2.5 Oz ***** 2 \$7.99 \$8.90 / oz 2 day shipping	Patented Breakthrough... ***** 67 \$18.98 \$19.98 2 day shipping	Cream 4 Oz ***** 13 \$3.84 \$6.00 / oz 2-day shipping
ARNICA CREAM 2.5 Oz Each ***** \$18.90 2-day shipping	2.5 Oz. Value Pack With Arnica... ***** 148 \$12.00 \$4.80 / oz 2-day shipping	\$12.48 2-day shipping



MaxRelief Arnica Pain Relief Cream - Australia's #1 - For Sufferers of Back, Neck, Knee, Joint & Muscle Pain. Reduces Arthritis & Joint Inflammation, Sciatica & Fibromyalgia pain treatment. 3.5 oz

***** [3 reviews](#) [MaxRelief](#) Walmart # 566705680

\$19.85 \$5.68 / oz

Free shipping on orders over \$35

Arrives by Saturday, Jun 23 [Options](#)

Qty

1

Add to Cart

Pickup not available

* Sold & shipped by [Walmart](#)

[Add to List](#)

[Add to Registry](#)

Try Prime Health Household & Baby Care

Shop school supplies

Deliver to Philadelphia 19019 Departments Your Amazon.com

EN Hello Sign in Account & Lists Orders Try Prime 0 Cart

Health & Personal Care Household Supplies Vitamins & Diet Supplements Baby & Child Care Health Care Sports Nutrition Sexual Wellness

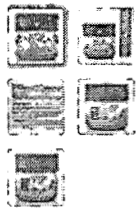
\$10 & under with FREE shipping

Health & Household > Health Care > Medications & Treatments > Pain Relievers > Rubs & Ointments

MaxRelief Arnica Montana Pain Cream - Australian #1 - For Sufferers of Knee, Joint & Outback Muscle Pain Reduce

455 customer reviews 26 answered questions

Amazon's Choice for "arnica pain relief cream"



Price **\$19.85** (\$6.62 / ounce)

FREE Shipping on orders over \$25 or get FREE Two-Day Shipping with Amazon Prime

In Stock Sold by Nature's Natural and Fulfilled by Amazon Gift-wrap available

Want it tomorrow, Sept 8? Order within 1 hr 5 mins and choose Saturday Delivery at checkout Details

☐ Yes, I want FREE Two-Day Shipping with Amazon Prime

Deliver to Philadelphia 19019

Qty 1

Turn on 1-click ordering

Add to Cart

Add to List

Other Sellers on Amazon

2 new from \$19.85

Share

About the product

- Temporarily relieve numbness and discomfort in back, neck, finger and muscles. Excellent for Sciatic pain. Temporarily relieve numbness and discomfort in back, neck, finger and muscles. Support for Wrist and Lower Back pain.
- 3X times the Maximum Arnica ingredients of other leading creams. Maximum Strength compared to Arnicare Gel at 7%.
- The only pain relief cream to include the extra benefits of Arnica, Eucalyptus, & Emu Oil.

More



BOIRON

Relieves muscle pain and stiffness naturally

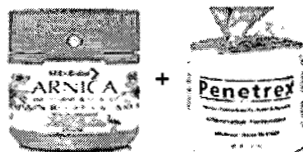
Boiron Arnica Montana 30C Homeopathic Medicine for Pain Relief

1,102

\$11.00 ✓prime

Ad feedback

Frequently bought together



Total price **\$38.82**

Add both to Cart

Add both to List

✓ This item MaxRelief Arnica Montana Pain Cream - Australian #1 - For Sufferers of Knee, Joint & Outback Muscle \$19.85 (\$6.62 / ounce)

Exhibit “B”



(<https://maxrelief.us>)

Australia's #1 Pain Relief Spray and Cream Now Available in the USA!



MaxRelief

Get effective pain relief from the only pain relieving formula that combines Arnica and Emu oil. With 3 times the Arnica of other leading products, MaxRelief quickly soothes sore joints and muscles, providing temporary pain relief and increased flexibility. MaxRelief uses proven, all-natural ingredients to ease the pain associated with arthritis, bruises, strain or overuse. And because it contains camphor, blood flow increases to the affected area to promote healing.

100% Natural Ingredients

Fast-Acting

Soothing Warmth

3 Times the Arnica of Other Leading Products

Only Product with Arnica **and** Emu Oil

No Menthol. Camphor As The Active Ingredient

[Buy Now \(products\)](#)

A Safe and Effective, ***Natural Alternative*** for Pain Relief

MaxRelief has developed a fast, powerful pain relief therapy to help ease the everyday aches and pains that keep you from enjoying life to the fullest.

Use MaxRelief spray and cream to relieve sore muscles and aching joints to get back to doing the things you love to do.

We stand behind our products and
guarantee your satisfaction!

Please **select a product** to learn more.



MaxRelief Pain Relief Spray

Maximum Relief for Aching Joints and
Sore Muscles is Just a Spray Away.

View

(<https://maxrelief.us/maxrelief-spray/>)

Buy ([/?add-to-cart=140](https://maxrelief.us/?add-to-cart=140))



MaxRelief Pain Relief Cream

Get Penetrating Pain Relief in a Soothing
Cream

View

(<https://maxrelief.us/maxrelief-cream/>)

Buy ([/?add-to-cart=126](https://maxrelief.us/?add-to-cart=126))




Media (<https://maxrelief.us/media/>) ⋮

Terms and Conditions (<https://maxrelief.us/terms-and-conditions/>) ⋮

Shipping Information (<https://maxrelief.us/shipping-information/>) :

Contact (<https://maxrelief.us/contact/>)

 (<https://twitter.com/MaxReliefUSA>)

 (<https://www.facebook.com/pages/Maxrelief/639722299421347>)

Copyright 2015 MaxRelief, All Rights Reserved

Exhibit “C”

PAINAWAY AUSTRALIA PTY LTD,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 16-3627
	:	
NATURES INVESTMENTS HOLDING	:	
PTY LTD, d/b/a MAXRelief USA,	:	
Defendant.	:	
	:	

CYNTHIA M. RUFÉ, J.

JS 44 (Rev 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Painaway Australia Pty Limited ACN 151 146 977

(b) County of Residence of First Listed Plaintiff Australia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mathieu J. Shapiro, Rigel C. Farr
Obermayer Rebmann Maxwell & Hippel LLP, Centre Square West, 1500
Market Street, Suite 3400, Philadelphia, PA, 215-665-3000

DEFENDANTS

MaxRelief USA, Inc.

County of Residence of First Listed Defendant Denver, Colorado
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

15 USC § 1125

Brief description of cause

Violation of Section 43 of the Lanham Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND:

☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

9/7/2018

SIGNATURE OF ATTORNEY OF RECORD

Rigel C. Farr

SEP - 7 2018

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Painaway Australia Pty Limited, Level 17, 175 Pitt Sydney, NSW, Australia

Address of Defendant: MaxRelief USA, Inc., 131 Fairfax Street, Denver, Colorado, 80220

Place of Accident, Incident or Transaction: Pennsylvania

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 9/7/2018

Rigel C. Farr
Attorney-at-Law / Pro Se Plaintiff

316869

Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases
(Please specify) Lanham Act, 15 U.S.C. § 1125(a)

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify) _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Rigel C. Farr, counsel of record or pro se plaintiff, do hereby certify

- ☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs.
- ☒ Relief other than monetary damages is sought.

DATE 9/7/2018

Rigel C. Farr
Attorney-at-Law / Pro Se Plaintiff

316869

Attorney ID # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

SEP -7 2018

PBT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Painaway Australia Pty Limited
ACN 151 146 977

v.

Max Relief USA, Inc.

CIVIL ACTION

NO.

18cv3854

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

9/7/2018
Date

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